

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GENE R. MORGAN, JR.

Claimant

VS.

CESSNA AIRCRAFT COMPANY

Respondent

Self-Insured

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Docket No. 1,012,756

ORDER

Respondent appeals the January 21, 2005 Award of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded benefits for an injury suffered through September 5, 2003, while employed with respondent. Oral argument was held on June 17, 2005.

APPEARANCES

Claimant appeared by his attorney, Michael L. Snider of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. At oral argument, the parties acknowledged the average weekly wage computed by the Administrative Law Judge (ALJ) in the Award was appropriate, with claimant having an average weekly wage of \$678.49 through October 31, 2003. As of November 1, 2003, claimant's fringe benefits terminated, at which time an additional \$158.60 would be added, increasing claimant's average weekly wage to \$837.09. The parties additionally stipulated that the wage loss computations contained in the Award, showing claimant with a 100 percent wage loss through January 31, 2004, a 57 percent wage loss beginning February 1, 2004, and ultimately

a 52 percent wage loss beginning May 1, 2004,¹ were appropriate for the purposes of this award. Those numbers are not in dispute.

ISSUES

What is the nature and extent of claimant's injury and disability? More particularly, what, if any, task loss did claimant suffer under K.S.A. 44-510e?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant suffered injury through a series of accidents beginning August 12, 2003, and culminating on September 5, 2003, claimant's last day worked with respondent. The injury occurred while claimant was inspecting an area. When he turned and looked to the left, his neck snapped. Claimant suffered injury to his neck, shoulders and hands. Claimant reported the injury to his foreman and went to Health Services, which is respondent's employee health department. He was then referred to MEC, which provided treatment, including physical therapy and x-rays. Claimant was treated by Bernard T. Poole, M.D., who ordered neurological tests on both arms, which indicated bilateral carpal tunnel syndrome. Claimant underwent spinal blocks and physical therapy, and Dr. Poole recommended carpal tunnel surgery, which claimant declined. Claimant was returned to work without restrictions and ultimately terminated his employment with respondent as of September 5, 2003. The circumstances surrounding the termination were disputed, but respondent does not contest claimant's entitlement to a permanent partial general disability under K.S.A. 44-510e. Respondent merely contends that the 36 percent task loss opinion of Pedro A. Murati, M.D., is excessive and that the Board should also consider the task loss opinion of board certified family practitioner Larry K. Wilkinson, M.D. Dr. Murati, after reviewing the task loss analysis provided by vocational expert Doug Lindahl, opined claimant had lost the ability to perform eight of twenty-two job tasks, for a 36 percent task loss. Dr. Wilkinson, after reviewing the task loss opinion of Mr. Lindahl, determined claimant had lost the ability to perform four of the twenty-two tasks, for an 18 percent task loss. The ALJ adopted the opinion of Dr. Murati. While the ALJ does list the two depositions of Dr. Wilkinson, it is noted that the ALJ does not mention Dr. Wilkinson in the body of the Award when discussing claimant's entitlement to permanent partial general disability. Respondent argues that Dr. Wilkinson's opinion

¹ At oral argument, the parties stipulated to the May 1, 2004 date. However, the 52 percent wage loss should actually begin on April 19, 2004. (See R.H. Trans. at 43.)

should have been adopted by the ALJ in determining claimant's loss of task performing abilities under K.S.A. 44-510e. Respondent contends that since Dr. Wilkinson, as the medical director at respondent's plant, was involved in the functional capacity evaluation (FCE) and the placing of restrictions on claimant and, additionally, is familiar with the job tasks performed by claimant at Cessna, his opinion should be given greater weight than that of Dr. Murati.

Claimant, on the other hand, argues that the opinion of Dr. Wilkinson is not credible as the FCE performed on claimant indicated degenerative disc disease, but omitted evaluation of bilateral carpal tunnel syndrome. Additionally, nerve conduction studies performed on claimant prior to the FCE indicated mild to moderate carpal tunnel syndrome bilaterally. Dr. Wilkinson, when considering claimant's restrictions and task loss, considered only the degenerative cervical spine disease as that was the only condition listed by Dr. Wilkinson for FCE evaluation. During the FCE, however, claimant did display right upper extremity pain and left hand discomfort, with his hands being described as numb. Claimant argues that Dr. Wilkinson's failure to consider restrictions or any task loss for the bilateral carpal tunnel condition should result in Dr. Wilkinson's task loss opinion being given no weight.

The Board, in reviewing the medical evidence, agrees with claimant's argument that Dr. Wilkinson's opinion is not persuasive. Claimant was diagnosed with bilateral carpal tunnel syndrome, had positive EMGs five months prior to the FCE, and displayed upper extremity symptoms bilaterally during the FCE. The fact that Dr. Wilkinson focused only on the cervical condition, while ignoring what appeared to be legitimate upper extremity complaints, causes the Board to doubt the accuracy of Dr. Wilkinson's opinion both from a restriction standpoint and from a task loss standpoint. The Board, therefore, finds that the opinion of Dr. Murati, assessing claimant a 36 percent task loss, is the more persuasive and that the adoption by the ALJ of that opinion is affirmed.

The Board notes that the 17 percent whole person impairment opined by Dr. Murati pursuant to the *AMA Guides*, Fourth Edition,² was not argued by the parties and is, therefore, adopted by the Board as the appropriate functional impairment in this instance.

The Board, however, notes that the ALJ based claimant's award beginning September 5, 2003, on an average weekly wage of \$837.09. Pursuant to the stipulation of the parties, claimant's average weekly wage through October 31, 2003, is \$678.49. As of November 1, 2003, claimant's average weekly wage, including \$158.60 in benefits, increases to \$837.09. However, this modification of the average weekly wage has no effect on the award as both \$678.49 and \$837.09 calculate to a maximum payment in

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

excess of the \$440 maximum weekly benefit for a September 5, 2003 accident. Therefore, while the average weekly wage increases in this award, the actual calculation of the award does not change. The Board, therefore, adopts the calculations of the award of the ALJ.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated January 21, 2005, should be, and is hereby, affirmed in all regards and an award is granted in favor of the claimant and against the respondent, a qualified self-insured, for injuries suffered through September 5, 2003, for a 17 percent permanent partial functional impairment, followed by a 68 percent permanent partial general disability through January 31, 2004, followed thereafter by a 46.5 percent permanent partial general disability for the period February 1, 2004, through April 16, 2004, followed by a 44 percent permanent partial general disability beginning April 19, 2004.

Claimant is entitled to 21.14 weeks of permanent partial disability compensation at the rate of \$440 per week totaling \$9,301.60 for the period through January 31, 2004, for a 68 percent permanent partial general disability. For the period February 1, 2004, through April 16, 2004, claimant is entitled to 10.71 weeks of permanent partial disability compensation at the rate of \$440 per week totaling \$4,712.40 for a 46.5 percent permanent partial general disability. Thereinafter, beginning April 19, 2004, claimant is entitled to 150.75 weeks of permanent partial disability compensation at the rate of \$440 per week for a 44 percent permanent partial general disability, for a total award of \$80,344.

As of June 28, 2005, there is due and owing claimant 94.57 weeks of permanent partial general disability compensation at the rate of \$440 per week totaling \$41,610.80 which is ordered paid in one lump sum minus any amounts previously paid. Thereafter, the remaining balance in the amount of \$38,733.20 shall be paid at the rate of \$440 per week until fully paid or until further order of the Director.

In all other regards, the Award of the Administrative Law Judge is approved insofar as it does not contradict the findings contained herein.

IT IS SO ORDERED.

Dated this ____ day of July 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director